IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 111 of 1985

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HORMASJI N BHATHENA

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

MR KC PATEL for Petitioner

MR AKIL QURESHI WITH MR MANISH R BHATT for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 20/09/2000

ORAL JUDGEMENT

Per C.J:

In this Reference under section 156 (1) of the Income tax Act, 1961 in the case of the assessee for the assessment years 1981-81 and 1981-82 on the question of levy of tax on capital gain on transfer of agricultural land of the assessee, the following question of law has been referred:

> "Whether on the facts and in the circumstances of the case aned in law, the Tribunal rightly held that hte capital gain on transfer of agricultural land of the assessee is leviable?"

From the statement of case of the Tribunal, we find that the Tribunal answered the question against the assessee in view of the decision of Division Bench of this court in the case of Ambalal Maganlal, 98 ITR 237..

The Tribunal,however, has referred this question as, against the decision of this court in the case of Ambalal (supra), an appeal is pending in the Supreme Court. This is Reference of 1985 and we are told that decision of the Supreme court is still awaited.

Learned counsel appearing for the department, however, brings to our notice the legislative change made by adding Explanation below Section 2 (1A) having retrospective effect.

Definition of `agricultural income' is contained in section 2 (1A). Explanation 1 added by Finance Act 1989 with effect from 1.4.1970 reads as under:

> "For the removal of doubts, it is hereby declared that revenue derived from land shall not include and shall be deemed never to have included any income arising from the transfer of any land referred to in item (a) or item (b) of sub-clause (iii) of clause (14) of this section."

Since now the legislature has intervened by adding Explanation quoted above , having retrospective effect, we do not consider it necessary to keep the matter pending and leave the matter for awaiting decision of the Supreme Court. In view of the above legislative change by addition of Explanation below Section 2 (1A), the question referred has to be answered against the assessee and in favour of the revenue. It is answered accordingly. Reference is accordingly disposed but

without any order as to costs.

(D. M. Dharmadhikari, C.J.)

(A. R. Dave, J.)

parekh